



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Contact Person:

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Significant Index Number:

4941.04-00

Identification Number:

Telephone Number:

Employer Identification Numbers:

Legend:

A =

B =

C =

D =

E

F =

Dear :

We have considered your ruling request as to the proper treatment of the termination of A and whether termination constitutes an act of self-dealing under section 4941 of the Internal Revenue Code ("Code").

FACTS:

A was a Charitable Remainder Unitrust (CRUT) under section 664 of the Code. For each taxable year of the trust term through the year , A provided a distribution to B and C of a unitrust amount equal to the lesser of trust income and six percent of the net market value of the trust assets valued as of the first day of each taxable year.

The unitrust amount for any year also included any amount of trust income for any year that is in excess of the amount required to be distributed to the extent the aggregate of the amounts paid in prior years was less than the aggregate of the amounts computed as six percent of the net fair market value of the assets. Thus, A was originally structured as a net income with makeup CRUT. At the end of A converted from the income exception method to the fixed percent method of calculating the unitrust method in a manner consistent with Income Tax Regulations section 1.664-3(a)(1)(i)(c).

For each taxable year following the year , B and C received a unitrust amount equal to six percent of the net fair market value of the trust assets valued as of the first day of each taxable year.

At the end of the trust term, the remaining trust assets were to be distributed to D. Subsequently, B and C determined that rather than waiting until the end of the trust term to contribute the trust assets to D, they would establish and fund a supporting organization within the meaning of section 509(a)(3) to support D.

On July 2, , B and C amended the unitrust agreement to designate E (Charitable Remainderman) as the sole remainder beneficiary of A. E is classified as an organization described in section 501(c)(3) and is a supporting organization within the meaning of section 509(a)(3). B and C are directors and officers of E.

B, C and E have determined that it is in each of their respective best interests to have A terminated and the assets distributed. The state law of F allows the early termination of a trust if the settlors and all beneficiaries agree.

B and C are disqualified persons with respect to A. B and C are also directors of E; therefore, they are disqualified persons with respect to E.

A proposes to distribute to B and C, the Income Beneficiaries, and E, the Charitable Remainderman, lump sums equal to the present value of their respective interests effective on the date of termination. B and C represent that the value will be determined using the discount rate in effect under section 7520 of the Code on the date of termination, and using the methodology under section 1.664-4 of the regulations for valuing interests in charitable remainder trusts.

B and C have each signed an affidavit under penalties of perjury that they are aware of no medical condition expected to result in a shorter-than-average longevity.

#### RULING REQUESTED

Termination of A and the distribution of A's assets to B, C and E will not constitute direct or indirect acts of self-dealing within the meaning of section 4941 of the Code.

#### LAW

Section 507(a)(1) of the Internal Revenue Code provides in part, that the status of private foundation shall be terminated if the entity provides notice to the Internal Revenue Service that it is terminating its private foundation status and pays the termination tax under section 507(c).

Section 4941(a)(1) of the Code imposes an excise tax on any act of self-dealing between a private foundation and any of its disqualified persons defined in section 4946.

Section 4941(a)(2) of the Code imposes an excise tax on a participation of a foundation manager in an act of self-dealing between a disqualified person and a foundation manager.

Section 4941(d)(1)(A) of the Code provides, in part, that an act of self dealing includes any sale or exchange between a disqualified person and a private foundation.

Section 4946(a) of the Code provides that the term "disqualified person" with respect to a private foundation includes a substantial contributor to the foundation (including the creator or the trust), a family member of a substantial contributor (including children), and a foundation manager (including a trustee).

Section 53.4946-1(a)(8) of the Foundation and Similar Excise Tax Regulations provides that for purposes of section 4941 only, the term "disqualified person" shall not include any organization which is described in section 501(c)(3) (other than an organization described in section 509(a)(4)).

Section 4947(a)(2)(A) of the Code describes split-interest trusts as those that are not exempt from federal income tax under section 501(a), not all of the unexpired interests in which are devoted to purposes in section 170(c)(2)(B), and which have amounts in trust for which a deduction was allowed under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522. Furthermore, split-interest trusts are subject to the rules of sections 507, 508(e), 4941, 4943 (except (b)(3)), 4944(except as provided in (b)(3)), and 4945.

Section 53.4947-1(c)(2)(i) of the Regulations provides that under section 4947(a)(2)(A), section 4941 does not apply to any amounts payable under the terms of a split-interest trust to income beneficiaries unless a deduction was allowed under sections 170(f)(2)(B), 2055(e)(2)(B), or 2522(e)(2)(B) with respect to the income interest of such beneficiary.

Rev. Rul. 69-486, 1969-2 CB 159 concerns a non-pro rata distribution of trust property in kind by a trustee who had no authority to make such a distribution and did so as a result of a mutual agreement by the beneficiaries, one of which is a charitable organization. The distribution was made as a final distribution of trust property. The trust property consisted of notes which had not appreciated in value and common stock that appreciated in value. By agreement, all of the notes were distributed to the charity and the stock to the individual beneficiary. The ruling held that the distribution was equivalent to a pro rata distribution of the stock and notes to both followed by an exchange of the charity's share of the common stock for the individual's pro rata share of the notes.

## ANALYSIS

A is described in section 4947(a)(2) by having Income Beneficiaries and a Charitable Remainderman, described in sections 509(a)(1) and 170(b)(1)(A)(vi). By being described in section 4947(a)(2), A is subject to the provisions of sections 507, 4941, and 4945, as if A were a private foundation. The Income Beneficiaries are disqualified persons with respect to A within the meaning of section 4946(a)(1)(A). However, the Income Beneficiaries are not disqualified persons with respect to the Charitable Remainderman because the Charitable Remainderman is a public charity described in section 509(a).

Section 4941 applies to certain transactions between private foundations and disqualified persons. By early termination, A will distribute lump sums to the Income Beneficiaries and the Charitable Remainderman equal to the actuarial value of their interests in the CRUT, and the distributions will also be treated as a constructive sale or exchange between the Income Beneficiaries and Charitable Remainderman. See Rev. Rul. 69-486.

Generally payments to the Income Beneficiaries by the CRUT would constitute self-dealing. However, because the distribution to the Income Beneficiaries equals the actuarial value of the income interest, the exception to self-dealing provided by section 53.4947-1(c)(2)(i) of the regulations applies and the distribution will not be an act of self dealing. Furthermore, because the Charitable Remainderman is a public charity, section 4941 does not apply to the transaction between the Income Beneficiaries and the Charitable Remainderman.

## CONCLUSION

The early termination of A will not be considered an act of self-dealing under section 4941 of the Code.

This ruling is based on your representation that E, the Charitable Remainderman, is a supporting organization within the meaning of section 509(a)(3) of the Internal Revenue Code and our understanding that E continues to qualify for the status as a supporting organization under section 509(a)(3) at the time that the proposed transaction is consummated. This ruling is explicitly not valid if E is actually classified as a private foundation at the time of the transaction including, but not limited to, such determination based on the IRS examination of the organization.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

- 5 -

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Robert C. Harper, Jr.  
Manager, Exempt Organizations  
Technical Group 3

Enclosure  
Notice 437